scope of its public duty, the carrier contracts as an ordinary member of society, and the general policy of freedom of contract prevails. *Wells* v. *Steam Navigation Co.*, 8 N. Y. 375. Accordingly, limitation of liability for negligence is effective if the transportation is purely gratuitous. *Kinney* v. *Central Railroad of New Jersey*, 34 N. J. L. 513; *Quimby* v. *Boston & Maine R. Co.*, 150 Mass. 365, 23 N. E. 205. The exemption is likewise valid against the employees of a news company or circus, which the railroad carries aside from its public undertaking. *Alexander* v. *Toronto & N. R. Co.*, 33 U. C. Q. B. 474; *Robertson* v. *Old Colony R. Co.*, 156 Mass. 525, 31 N. E. 650. *Cf. Poucher* v. *New York Central R. Co.*, 49 N. Y. 263. The established view has been that a railroad owes no public duty to dependent services such as express and sleeping-car lines. *Express Cases*, 117 U. S. 1; *Chicago, etc. R. Co.* v. *Pullman, etc. Co.*, 139 U. S. 79. *Contra*, *McDuffee* v. *Portland & R. R. Co.*, 52 N. H. 430. See 1 WYMAN, PUBLIC SERVICE CORPORATIONS, § 470 *et seq.* Consequently the authorities uphold contracts exempting the railroad from liability for negligence to express messengers. *Baltimore & O. S. W. Ry. Co.* v. *Voigt*, 176 U. S. 498; *Blank* v. *Illinois Central R. Co.* 182 Ill. 332, 55 N. E. 332. The same view prevails with respect to the employees of sleeping-car companies. *Chicago, R. I. & P. Ry. Co.* v. *Hamler*, 215 Ill. 525, 74 N. E. 705; *Russell* v. *Pittsburgh, C., C., & St. L. Ry. Co.*, 157 Ind. 305, 61 N. E. 678; *Denver & R. G. R. Co.* v. *Whan*, 39 Colo. 230, 89 Pac. 39. *Contra*, *Jones* v. *St. Louis, etc. R. Co.*, 125 Mo. 666, 28 S. W. 883. But a few authorities, including the principal case, take a different view, reasoning that the transportation of dependent services, once undertaken by the railroad, assumes the incidents of ordinary transportation. *Davis* v. *Chesapeake & O. R. Co.*, 122 Ky. 528, 92 S. W. 339. As to this particular incident, at least, the reasoning seems unsound. The validity of exemption from liability for negligence depends upon its relation to the interests of the traveling public. The law of public service is interested in giving them, and not all those with whom the carrier deals, an opportunity to contract on equal footing. Furthermore the danger that limitation of liability of dependent services will cause deterioration of service to the employees is so slight as to be negligible. Public policy, of course, would forbid a contract exempting the master from liability for negligence to his servant. *Johnston* v. *Fargo*, 184 N. Y. 379, 77 N. E. 388; *Lake Shore & M. S. R. Co.* v. *Spangler*, 44 Oh. St. 471. But it is well settled that employees of the Pullman company are not, for this purpose at least, servants of the railroad. *McDermon* v. *Southern Pacific R. Co.*, 122 Fed. 669; *Chicago*, R. I. & *P. Ry. Co.* v. *Hamler*, *supra*. The principal case, therefore, is difficult to support.

CHATTEL MORTGAGES — RIGHTS OF INTERVENING CREDITORS — NECESSITY OF CHANGE OF POSSESSION WHEN GOODS ARE IN HANDS OF PRIOR MORTGAGEE. — Chattels were mortgaged by the owner, and possession given to an agent of the mortgagee. Later a second mortgage was executed to the defendant, the agent of the prior mortgagee agreeing to hold possession for the defendant also. A statute required the recording of chattel mortgages or a change of possession. Neither mortgage was recorded. In an action by the trustee in bankruptcy of the owner, *held*, that the mortgage of the defendant was void. *Moffat* v. *Beeler*, 137 Pac. 963 (Kan.).

The primary purpose of statutes requiring record of chattel mortgages or a change of possession is to prevent the deception to creditors, caused by the retention of possession by the mortgagor. There is no such danger where the property to be mortgaged is already in the possession of a third party not an agent of the mortgagor. Accordingly it has been held that the necessary change of possession is accomplished by an agreement by the third party to hold possession as agent of the mortgagee. *Nash* v. *Ely*, 19 Wend. (N. Y.) 523; *Hodges* v. *Hurd*, 47 Ill. 363. The same rule prevails in the law of sales. *Pierce*

v. *Chipman*, 8 Vt. 334; see *Hallgarten* v. *Oldham*, 135 Mass. 1, 9. It is submitted that the fact that the third person holds under a prior mortgage should not alter the result. See *Wheeler* v. *Nichols*, 32 Me. 233. The opinion in the principal case proceeds on the theory that the statute has the further aim of making the change of possession to the mortgagee notice of the specific claim under which possession was taken. But this view goes too far, since it would invalidate even a second unrecorded mortgage to the prior mortgagee in possession. The extent of the incumbrance can be discovered in the principal case as easily as in any case where the goods are in the hands of third parties, who hold for the mortgagees.

COMPOSITION WITH CREDITORS — RESERVATION OF MORAL OBLIGATION — VALIDITY OF SUBSEQUENT PROMISE AFTER COMPOSITION. — The defendant executed a composition with his creditors and reserved a secret moral obligation to pay the plaintiff in full, later making a promise to that effect. The plaintiff sues on the subsequent promise. *Held*, that the later promise is supported by consideration. *Straus* v. *Cunningham*, 144 N. Y. Supp. 1014 (App. Div.).

An agreement with two or more creditors for part payment in complete satisfaction of debts, validly discharges the old liabilities, substituting the new agreement. *Warren* v. *Whitney*, 24 Me. 561. Therefore a subsequent promise to pay the balance of the old debt is unenforceable, unless supported by present consideration. *Stafford* v. *Bacon*, 1 Hill (N. Y.) 533. Recovery is permitted in the principal case, however, on the ground that the moral obligation to pay debts in full is consideration for the new promise; that although the moral obligation, as in the above cases, does not ordinarily survive a voluntary discharge, it is preserved here by the express reservation. *Taylor* v. *Hotchkiss*, 81 N. Y. App. Div. 470, 80 N. Y. Supp. 1042. After a discharge in bankruptcy, even though the debt is extinguished, a promise to pay the original debt is binding. *Bridgman* v. *Christie*, 51 N. J. Eq. 331, 25 Atl. 939. Although variously explained, this exception would seem to rest on the ground that there is a public policy in holding the debtor to a reassumed liability, since he has obtained an involuntary discharge through operation of law. There would seem to be an equally strong policy in the case of composition agreements, for the creditors' consent is in effect coerced by their natural desire to escape a general struggle to appropriate the debtor's assets. The court, in distinguishing the present case on the ground that there was an express reservation, shows a tendency to reach this result and avoid the authority of the composition cases.

CONFLICT OF LAWS — RIGHTS AND OBLIGATIONS OF FOREIGN CORPORATIONS — ENFORCEMENT OF INDIVIDUAL LIABILITY OF CORPORATORS. — The defendant, a citizen of New York, agreed to subscribe to stock in a corporation which was to do business in California. The corporation was formed under the Arizona law, its charter expressly exempting the stockholders from personal liability. The charter provided for the carrying on of business in California. The corporation then contracted debts in California, where, by statute, shareholders in foreign corporations were made personally liable. The plaintiff, a California creditor, now sues the defendant stockholder in the federal courts of New York. *Held*, that the defendant is personally liable. *Thomas* v. *Matthiessen*, 34 Sup. Ct. 312.

For a discussion of the principles involved in the case, see NOTES, p. 575.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — TAKING PROPERTY OR REGULATING ITS USE FOR PUBLIC ESTHETICS. — A city ordinance prohibited the building of retail stores in residential sections without consent of a majority of the frontage owners. *Held*, that the statute is unconstitutional. *People* v. *Chicago*, 103 N. E. 609 (Ill.).